

**CHILD AND ADULT CARE FOOD PROGRAM  
APPEAL PROCEDURES FOR  
CHILD AND ADULT CARE INSTITUTIONS AND SPONSORING AGENCIES  
REVISED JANUARY 25, 2006**

**Grounds for Appeal**

All institutions and sponsoring agencies may appeal adverse administrative actions that are implemented by the Tennessee Department of Human Services (TDHS). Such actions include:

1. Denial of an institution's application for participation for failure to meet the requirements of 7 CFR Part 226.15 and 7 CFR Part 226.16;
2. Denial of an institution's application for participation for failure to meet the requirement under Section 243(b) of Public Law 106-224 that all agencies be financially viable and administratively capable, and have internal controls to ensure program accountability;
3. Denial of an institution's application to become a new sponsoring institution of child care homes and/or non-integral child care centers based on the failure to meet an unmet need as authorized by the USDA;
4. Denial of an application submitted by a sponsoring agency on behalf of a site;
5. Termination of an approved food service site;
6. Denial of all or part of a claim for reimbursement;
7. Suspension and proposed termination/disqualification of program participation based on serious health or safety violations cited by state licensing officials or state or local health officials;
8. Suspension and proposed termination/disqualification of program participation based on activities that are found by TDHS/CACFP officials to threaten public health or safety; and
9. Proposed termination and disqualification of program participation for failure to fully and permanently correct serious deficiencies. Serious deficiencies include, but are not limited to, the following deficiencies as identified at 7 CFR Part 226.6 (c) (3) (ii):
  - a. Submission of false information on the institution's application, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity, which includes fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property,

making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the TDHS;

- b. Permitting an individual who is on the USDA National Disqualified List to serve in a principal capacity with the institution or, if a sponsoring organization, permitting such an individual to serve as a principal in a sponsored center or as a day care home;
- c. Failure to operate the Program in conformance with the performance standards set forth in 7 CFR Part 226.6 (b) (18);
- d. Failure to comply with the bid procedures and contract requirements of applicable federal procurement regulations;
- e. Failure to return to the TDHS any advance payments that exceeded the amount earned for serving eligible meals, or failure to return disallowed start-up or expansion payments;
- f. Failure to maintain adequate records;
- g. Failure to adjust meal orders to conform to variations in the number of participants;
- h. Claiming reimbursement for meals not served to participants;
- i. Claiming reimbursement for a significant number of meals that do not meet program requirements;
- j. Use of a food service management company that is in violation of health codes;
- k. Failure of a sponsoring organization to disburse payments to its facilities in accordance with the 7 CFR Part 226.16 (g) and (h) or in accordance with its management plan;
- l. Claiming reimbursement for meals served by a proprietary child care center during a calendar month in which less than 25 percent of its enrolled children, or 25 percent of its licensed capacity, whichever is less, were beneficiaries of the Tennessee Child Care Certificate Program or were income eligible for free or reduced-price meals;
- m. Failure by a sponsoring agency of child care homes to properly classify its sponsored homes as Tier I or Tier II in accordance with 7 CFR Part 226.15 (f);
- n. Failure by a sponsoring organization to properly train or monitor its sponsored centers or homes in accordance with 7 CFR Part 226.16 (d);

- o. Use of child care home funds by a sponsoring agency to pay for the sponsor's administrative expenses;
- p. Failure to perform any of the other financial and administrative responsibilities required by the regulations at 7 CFR Part 226;
- q. Failure to by a sponsoring agency to properly implement and administer the child care home termination and administrative review provisions identified at 7 CFR Part 226.16 (l);
- r. The fact that an institution or any of its principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements, unless the institution or the principal has been fully reinstated in, or is now eligible to participate in the program and has paid any debts owed;
- s. Conviction of an institution or any of its principals for any activity that occurred during the past seven years and that indicates a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice, or any other activity indicating a lack of business integrity as defined by the TDHS.
- t. Any other action affecting the institution's ability to administer the program in accordance with program requirements.

### **Appeal Procedures**

1. All institutions and sponsoring agencies may appeal any adverse administrative action taken by the TDHS by requesting a fair hearing to appear in person to refute the action, or by requesting a review of written information in lieu of a fair hearing. However, if the adverse administrative action concerns one or more of the circumstances identified at 7 CFR Part 226.6 (k) (9), an abbreviated appeal process will be observed and only written information that is submitted by the TDHS and institutions and sponsoring agencies will be reviewed.
2. All appeal requests must be presented in writing to the **CACFP contact person** not later than 15 calendar days from the date the institution or sponsoring agency received the notice of the action. The **CACFP contact person** will acknowledge the receipt of the appeal request within 10 calendar days of the receipt of the institution's or sponsoring agency's request, and present the request to the TDHS Appeals Division within 5 calendar days of receipt. The TDHS Appeal Division will designate the hearing officer who will conduct the fair hearing or review the written information in lieu of the hearing. The written request should state if a fair hearing is requested or if a review of written information in lieu of a fair

hearing is requested. If the appeal request from the institution or sponsoring agency does not specifically request a hearing, a review of written information in lieu of a hearing will occur. To be considered for a fair hearing or for a review of written information in lieu of a fair hearing, all written documents must be submitted to the CACFP contact person not later than 30 days after receipt of the notice of adverse administrative action. **The CACFP contact person** will forward the written documents to the TDHS Appeals Division within 5 calendar days of receipt. If an institution or sponsoring agency does not request a fair hearing or a review of written information in lieu of the hearing within 15 calendar days from the date the institution or sponsoring agency receives a Notice of Intent to Terminate, the TDHS will issue a letter advising the institution or sponsoring agency that it is terminated from the CACFP effective on the 16<sup>th</sup> calendar day following the institution's or sponsoring agency's receipt of the notice, and that the responsible principals and individuals of the institution or sponsoring agency are disqualified from participation.

3. The date of an institution's or sponsoring agency's receipt of a notice of suspension and/or proposed termination and disqualification will be governed by the federal regulation at 7 CFR Part 226.2.
4. The institution or sponsoring agency must refute the charges contained in the notice during the fair hearing or in the written information that is provided in lieu of the hearing.
5. The institution or sponsoring agency may retain legal counsel, or may be represented by another person.
6. If a fair hearing is requested, the institution or sponsoring agency will be notified in writing of the time, date and place of the fair hearing at least 10 calendar days in advance.
7. Any information which supports an adverse administrative action taken by the TDHS shall be available to the institution or sponsoring agency for inspection from the date of the receipt of the request for a fair hearing or a review of written information in lieu of the hearing.
8. The procedures contained in the Uniform Administrative Procedures Act found at TCA 4-5-301 et seq. shall be followed in rendering a decision on all appeals. The decision of the hearing officer shall be the final administrative determination to be afforded to the institution or sponsoring agency, and shall be rendered in a timely manner not to exceed 60 calendar days from the date of the receipt of the request for a fair hearing .

9. The **CACFP contact person** for the submission of all requests for a fair hearing or for a review of written information in lieu of a hearing is:

Steve Neece, Director  
Child and Adult Care Services  
Tennessee Department of Human Services  
Citizens Plaza Building  
400 Deaderick Street  
Nashville, Tennessee 37248-9500  
Telephone: (615) 313-4765

10. If a termination action is upheld by the hearing officer, the TDHS will issue a letter to the institution or sponsoring agency and its responsible principals and individuals advising that the termination and disqualification are effective on the date of the ruling issued by the hearing officer.
11. As required by the federal regulation at 7 CFR Part 226.6 (c) (7), each disqualified institution, sponsoring agency, principal and individual will be placed on the National Disqualified List maintained by the U.S. Department of Agriculture (USDA). Once included on the National Disqualified List, an institution, sponsoring agency, principal and individual shall remain on the list until such time as the USDA, in consultation with the TDHS, determines that the serious deficiencies that led to their placement on the list have been corrected, or until seven years have elapsed since they were disqualified from participation. However, if the institution, sponsoring agency, principal or individual has failed to repay debts owed under the program, they will remain on the list until the debt has been paid.